



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

518-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

VISTA MEDICAL CENTER HOSPITAL  
4301 VISTA ROAD  
PASADENA TEXAS 77504

**Carrier's Austin Representative Box**  
47

#### **Respondent Name**

AMERISURE MUTUAL INSURANCE CO

#### **MFDR Date Received**

MARCH 2, 2005

#### **MFDR Tracking Number**

M4-05-4794-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated March 23, 2005:** "TWCC Rule 133.304(c), sets forth those specific requirements that a carrier must follow in reducing or denying payment for medical services. Thus, under Rule 133.304(c), a Carrier has two separate requirements in filing a denial: (1) it must use a TWCC approved denial code; (2) it must state, in non-generic language, each basis for its denial of reimbursement...when an EOB is inadequate pursuant to the TWCC Rules and the Texas Labor Code, there is 'no legal denial of reimbursement'." "...if the total audited charges for the entire admission are below \$40,000, the Carrier may reimburse at a 'per diem' rate for the hospital services. However, if the total audited charges for the entire admission are at or above \$40,000, the Carrier shall reimburse using the 'Stop-Loss Reimbursement Factor' (SLRF). The SLRF of 75% is applied to the 'entire admission'." "In this instance, the audited charges that remained in dispute after the last bill review by the insurance carrier were \$41,349.88."

Amount in Dispute: \$27,479.91

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated March 21, 2005:** "We are in receipt of a MR-100 letter advising of a medical fee dispute between Vista Medical Center and this carrier. We forwarded a copy of the attached billing and prior EOB to our new auditing company, Solutions 4 for their review. We have provided a copy of their finding for your review. It appears there are no changes in what was allowed for the above dates of services."

**Response Submitted by:** Amerisure Mutual Insurance Co., P.O. Box 569680, Dallas, TX 75356

**Respondent's Audit Company, Solutions 4, Report dated March 15, 2004:** "I have reviewed the bill submitted by Vista Medical Center for the above mentioned service. Although Solutions-4 did not do an audit of these charges...I have deducted the following from the audit performed by Concentra Integrated Services, Inc." "The billed amount for the implants were deducted from the total amount billed (\$41,349.88 less \$40,880.00 for a total of \$30,469.88) Concentra applied the invoice submitted by Vista Medical Center in the amount of \$2,195.00 for these implants, added 10% to the invoice amount, (\$2,414.50) added this amount to the above audited charges of \$30,469.88 rendering a total of \$32,884.38, an amount clearly below stop-loss and a direct indication that Vista Medical Center inflated the implant charges. Therefore, the bill was reimbursed according to TWCC Rule

134.401(c) (6) (A) (i) after excessive implant charges were noted. The bill was reimbursed according to TWCC guidelines as follows: One day In-Patient Surgical Per Diem \$1118.00 (accurately using TWCC exception code F) Implant reimbursed at invoice plus 10% (accurately using TWCC exception code M)."

**Response Submitted by:** Solutions-4, Irving, Texas

**Respondent's Position Summary Dated April 5, 2005:** "Please see the Solutions 4 response which does not allow any additional payment for the above treatment."

**Response Submitted by:** Amerisure Mutual Insurance Co., P.O. Box 569680, Dallas, TX 75356

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
March 9, 2004 through March 10, 2004	Inpatient Hospital Services	\$27,479.91	\$0.00

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.304, 17 *Texas Register* 1105, effective February 20, 1992, amended effective July 15, 2000 sets out the procedures for medical payments and denials
2. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
4. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- F-Fee guideline MAR reduction.
- 855-002-Recommended allowance is in accordance with Workers Compensation Medical Fee Schedule Guidelines.
- M-No MAR.
- 855-016-Payment recommended at fair and reasonable rate.
- O-Denial after reconsideration.
- 920-002-In response to a provider inquiry, we have re-analyzed this bill and arrived at the same recommended allowance.

#### **Issues**

1. Did the respondent provide sufficient explanation for denial of the disputed services?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

## Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. The requestor in its position statement asserts that “TWCC Rule 133.304(c), sets forth those specific requirements that a carrier must follow in reducing or denying payment for medical services. Thus, under Rule 133.304(c), a Carrier has two separate requirements in filing a denial: (1) it must use a TWCC approved denial code; (2) it must state, in non-generic language, each basis for its denial of reimbursement...when an EOB is inadequate pursuant to the TWCC Rules and the Texas Labor Code, there is ‘no legal denial of reimbursement’.” 28 Texas Administrative Code §133.304(c), 17 Texas Register 1105, effective February 20, 1992, applicable to dates of service in dispute, states, in pertinent part, that “At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s). A generic statement that simply states a conclusion such as ‘not sufficiently documented’ or other similar phrases with no further description of the reason for the reduction or denial of payment does not satisfy the requirements of this section.” Review of the submitted documentation finds that the explanation of benefits were issued using the division-approved form TWCC 62 and noted payment exception codes “F, M, O, 855-002, 855-016, 920-002”.

These payment exception codes and descriptions support an explanation for the reduction of reimbursement based on former 28 Texas Administrative Code §134.401. These reasons support a reduction of the reimbursement amount from the requested stop-loss exception payment reimbursement methodology to the standard per diem methodology amount and provided sufficient explanation to allow the provider to understand the reason(s) for the insurance carrier's action(s). The Division therefore concludes that the insurance carrier has substantially met the requirements of 28 Texas Administrative Code §133.304(c).

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$41,349.88. The Division concludes that the total audited charges exceed \$40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position

statement states that "...if the total audited charges for the entire admission are below \$40,000, the Carrier may reimburse at a 'per diem' rate for the hospital services. However, if the total audited charges for the entire admission are at or above \$40,000, the Carrier shall reimburse using the 'Stop-Loss Reimbursement Factor' (SLRF). The SLRF of 75% is applied to the 'entire admission'." "In this instance, the audited charges that remained in dispute after the last bill review by the insurance carrier were \$41,349.88." This statement does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

4. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. The requestor's position statement does not address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was one day. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of one day results in an allowable amount of \$1,118.00.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
  - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$10,880.00.
  - The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
BAK Interbody Cage	1	\$2195.00	\$2,414.50

The division concludes that the total allowable for this admission is \$3,532.50. The respondent issued payment in the amount of \$3,532.50. Based upon the documentation submitted, no additional reimbursement is recommended.

## **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 11/7/2012 Date
--------------------	---	----------------------------

_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ 11/7/2012 Date
--------------------	---	----------------------------

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**